

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

BRAUN GmbH,

Plaintiff,

v.

RAYOVAC CORPORATION,

Defendant.

Civil Action No. 03-CV-12428-WGY

**BRAUN GmbH'S MOTION FOR  
PARTIAL SUMMARY JUDGMENT ON INVALIDITY**

Plaintiff Braun GmbH ("Braun") respectfully moves pursuant to Fed. R. Civ. P. 56(a) for entry of summary judgment of the validity of U.S. Patent No. 5,711,328 (the "'328 Patent). In support of this motion, Braun submits the accompanying *Statement of Undisputed Material Facts In Support of Braun GmbH's Motion For Partial Summary Judgment On Invalidity, Declaration of Dalila Arguez Wendlandt In Support of Braun GmbH's Motion For Partial Summary Judgment On Invalidity, Declaration of Samir Nayfeh In Support of Braun GmbH's Motion For Partial Summary Judgment On Invalidity*, and supporting memorandum.

The validity of Braun's patent can be decided summarily as a matter of law. An issued patent is presumed to be valid and in compliance with the requirements of patentability, 35 U.S.C. § 282, and summary judgment must enter against a party asserting invalidity as an affirmative defense where, as here, that party cannot adduce clear and convincing evidence from which a reasonable jury could find in its favor. See

Bayer AG & Bayer Corp. v. Schein Pharms., Inc., 301 F.3d 1306 (Fed. Cir. 2002) . As a matter of undisputed fact, Rayovac has not adduced clear and convincing evidence of invalidity.

**CONCLUSION**

WHEREFORE, partial summary judgment should be entered, striking Rayovac's affirmatives defenses of invalidity.

BRAUN GmbH,

By its attorneys,

/s/ Dalila Arguez Wendlandt

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Dated: August 22, 2005

**Certificate of Compliance with LR 7.1**

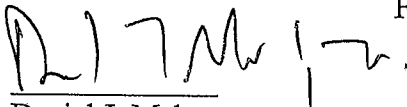
I, Dalila Arguez Wendlandt, certify that I conferred with counsel for Rayovac Corporation in a good faith effort to resolve the disputes addressed herein, and that effort failed.

**CERTIFICATE OF SERVICE**

I hereby certify that on August 22, 2005, I served a copy of the Plaintiff's Motion for Partial Summary Judgment to Invalidity on:

By Fed-Ex:

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Daniel J. Maher